

Handwritten initials: *WHA/32*

PTO/SB/21 (04-07)
Approved for use through 09/30/2007. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

TRANSMITTAL FORM <i>(to be used for all correspondence after initial filing)</i>	Application Number	10/731,173	
	Filing Date	December 8, 2003	
	First Named Inventor	Shawn W. O'Driscoll	
	Art Unit	3732	
	Examiner Name	C. Stokes	
Total Number of Pages in This Submission	5	Attorney Docket Number	ACM 340US

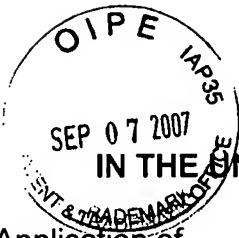
ENCLOSURES (Check all that apply)		
<input type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> After Allowance Communication to TC
<input type="checkbox"/> Fee Attached	<input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input type="checkbox"/> Amendment/Reply	<input type="checkbox"/> Petition	<input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)
<input type="checkbox"/> After Final	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Proprietary Information
<input type="checkbox"/> Affidavits/declaration(s)	<input type="checkbox"/> Power of Attorney, Revocation	<input type="checkbox"/> Status Letter
<input type="checkbox"/> Extension of Time Request	<input type="checkbox"/> Change of Correspondence Address	<input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):
<input type="checkbox"/> Express Abandonment Request	<input type="checkbox"/> Terminal Disclaimer	Return Receipt Postcard
<input type="checkbox"/> Information Disclosure Statement	<input type="checkbox"/> Request for Refund	
<input type="checkbox"/> Certified Copy of Priority Document(s)	<input type="checkbox"/> CD, Number of CD(s) _____	
<input type="checkbox"/> Reply to Missing Parts/Incomplete Application	<input type="checkbox"/> Landscape Table on CD	
<input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	Remarks	

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT			
Firm Name	Kolisch Hartwell, P.C.		
Signature	<i>James R. Abney</i>		
Printed name	James R. Abney		
Date	September 4, 2007	Reg. No.	42,253

CERTIFICATE OF TRANSMISSION/MAILING			
I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:			
Signature	<i>Christie Doolittle</i>		
Typed or printed name	Christie Doolittle	Date	September 4, 2007

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



In re Application of

Date: September 4, 2007

SHAWN W. O'DRISCOLL and DAVID G. JENSEN

Serial No. : 10/731,173

Examiner Candice Capri Stokes

Filed : December 8, 2003

Group Art Unit 3732

For : BONE PLATES

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

REPLY BRIEF OF APPELLANTS

This Reply Brief of Appellants is presented in reply to the Examiner's Answer dated July 2, 2007.

At the time of appeal to the Board, claims 3, 9-14, and 31-35 were rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 6,592,578 to Henniges et al. ("Henniges") alone (claims 3, 12-14, and 31-35) or in combination with another reference (claims 9-11). The Examiner's Answer on page 3, line 3, to page 6, line 2, maintained the rejection of these claims on the same grounds and using arguments that appear to be verbatim with those presented in the final Office action dated September 12, 2006. The Appeal Brief of appellants explained the impropriety of the rejections presented in the final Office action and will only be summarized here.

Independent claim 34 recites a set for bone fixation that includes at least three bone plates having different shapes. The bone plates are colored to provide a two-color

system for distinguishing left bone plates from right bone plates. In the two-color system, a pair of the bone plates of different shape are configured to be secured to the same left or right half of a skeleton and include the same color, whereas another of the bone plates of different shape is configured to be secured to the other half of the skeleton and includes a distinct color. The remaining claims depend directly or indirectly from claim 34.

The Examiner cited Henniges for disclosure of a color-coding system for bone plates. However, significantly, the color-coding system of Henniges is different from the two-color system recited by claim 34. The Examiner admitted this difference on the record: "Henniges et al teach the claimed invention except for the distinct color indicating a left or right half of the skeleton" (Examiner's Answer, page 4, lines 13 and 14). The Examiner followed this admission by asserting that it would have been obvious to incorporate a color-coded method for identifying each plate "in order to minimize confusion during a surgical procedure." (*Id.* at lines 15-18). However, the Examiner never provided any support whatsoever for the contention that it would have been obvious to incorporate the two-color system of claim 34. Appellants submit that it would not have been obvious to provide a two-color system for distinguishing left and right bone plates based on the disclosure of Henniges. In particular, Henniges discloses distinguishing each bone plate of different shape and size using a different color.

The Response to Argument section on page 6 of the Examiner's Answer does not address the primary point of contention, namely, the alleged obviousness of claim 34 over Henniges. In the Response to Argument section, the Examiner stated that "Henniges teaches a set of bone plates having different shapes and at least a pair of the

bone plates being capable of being secured to the same left or right half of the skeleton and including the same color.” Appellants strongly disagree. Henniges does not disclose, teach, or suggest a pair of bone plates of different shape for the same half of the skeleton and including the same color. Instead, Henniges discloses distinguishing any pair of distinctly shaped bone plates by color, whether or not the bone plates are configured for the same half or respective left and right halves of a skeleton.

The Examiner concluded the Response to Argument section by stating “[t]herefore, at least a two-color system is provided [by Henniges].” Appellants disagree with the Examiner’s characterization of the color-coding system of Henniges. In particular, appellants contend that Henniges provides an N-color system for distinguishing different bone plates, where N is the number of different bone plates. Accordingly, with at least three bone plates of different shape (as recited by claim 34), Henniges would provide at least a three-color system for distinguishing the bone plates, whatever the left/right sidedness of each bone plate, instead of the two-color system for distinguishing left and right bone plates recited by claim 34. In other words, the system of Henniges would differ in at least two significant ways from the system of claim 34: (1) it would have too many colors, and (2) it would not correlate those colors with left/right sidedness. Furthermore, the Examiner provided no teaching, suggestion, or motivation to make any modification to the color-coding system of Henniges, and particularly not to provide the set of at least three bone plates recited by claim 34. Therefore, the Examiner has not established a *prima facie* case of obviousness for any of the pending claims.

The rejections of claims 3, 9-14, and 31-35 under 35 U.S.C. § 103(a) are improper for at least the reasons set forth above and in appellants' earlier-filed Appeal Brief. Accordingly, appellants maintain their position that all of the rejections of the pending claims should be reversed.


CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to: Mail Stop Appeal Brief-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on September 4, 2007.


Christie Doolittle

Respectfully submitted,

KOLISCH HARTWELL, P.C.


James R. Abney
Registration No. 42,253
Customer No. 23581
520 S.W. Yamhill Street, Suite 200
Portland, Oregon 97204
Telephone: (503) 224-6655
Facsimile: (503) 295-6679
Attorney for Assignee